IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1664 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD MUNICIPAL CORPORATION
Versus
AFAKALAM ABDULRAHEMAN SHAIKH

Appearance:
1. First Appeal No. 1664 of 2001
MR HS MUNSHAW for Appellant No. 1
MR BG JANI for Respondent No. 1
..... for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE M.C.PATEL

Date of decision: 28/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. Notice returnable today. Mr. B.G. Jani appears for respondent no. 1 - original claimant and waives service of notice in the Appeal. Appeal admitted.

2. On a joint request of the learned counsel for the appellant and for the original claimant, this appeal is taken up for final hearing today.

3. We have heard the learned counsel for the respective parties at length and on merits. We have also examined the impugned judgment carefully with the assistance of the respective learned counsel. We have also referred to such evidentiary material on record to which our attention has been drawn.

4. As a result of the hearing and discussion, we may note that the controversy ultimately revolves around the extent and degree of contributory negligence of the driver of the bus, which is of the ownership of the appellant Corporation. The Tribunal has found the bus driver to be responsible for the accident to the extent of 70%. Learned counsel for the respective parties have, in this appeal and during the course of hearing, addressed us on this specific finding recorded by the Tribunal.

5. Learned counsel for the appellant has attempted to persuade us that this figure recorded by the Tribunal is extremely high and that the bus driver, if at all he was a contributory to the accident, could not possibly be held to be a contributory to the extent of 70%, and this figure must be scaled down. On the other hand, learned counsel for the opponent no. 1 - claimant has attempted to persuade us that the figure determined by the Tribunal is justiciable, looking to the material on record.

6. Having undergone this exercise of extensive hearing on this limited point, a consensus has been arrived at between the learned counsel on the basis of which they leave to this court, the determination of the figure of contributory negligence of the bus driver, without the necessity of giving reasons for the same.

7. Accordingly, as aforesaid, having applied our minds to all the aspects of the matter namely, the submissions of the learned counsel, the observations and findings in the impugned judgment and also the reference to the evidentiary material on record, we are of the opinion that the interests of justice will be met by finding and holding that the bus driver was a

contributory to the accident to the extent of 45%, and that the driver of the motor cycle was responsible to the extent of 55%. We find and hold accordingly.

8. In the premises aforesaid, the impugned judgment and award shall stand modified only to the aforesaid extent.

9. Decree accordingly.

10. Consequently, this appeal is partly allowed with no orders as to costs.

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